

**ST 00-1**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause On Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 99-ST-0000</b>
<b>v.</b>	)	<b>IBT # 0000-0000</b>
	)	<b>Assmt # SB 00000000000000</b>
<b>“JOHN DOE” d/b/a</b>	)	
<b>“ABC PRODUCTS”,</b>	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; “John Doe”, appearing pro se.

Synopsis:

The Department of Revenue (“Department”) issued an assessment to “John Doe” d/b/a “ABC Products” (“taxpayer”) for additional tax and penalty owed due to the late payment of sales taxes. The taxpayer timely protested the assessment. He does not contest the tax but requests that the penalty be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On January 19, 1999, the taxpayer sent a check to the Department for \$962 for his retailers’ occupation tax liability for the time period of January 1998 to December 1998. (Dept. Ex. #1)

2. The check was drawn from Credit Union One and was returned to the Department with a stamp on it that said “Uncollected Funds.” (Dept. Ex. #1)

3. On January 19, 1999, the taxpayer deposited \$675 into his Credit Union One account. The \$675 deposit was drawn from the taxpayer’s account at Bank One. The balance in the taxpayer’s account at Credit Union One after the deposit was \$1,124.82. (Taxpayer Ex. A, L)

4. An employee of Credit Union One testified that the credit union has a policy of placing a hold against certain deposits for three business days. Whether a hold is placed on the deposit depends on a number of factors such as the following: whether there is direct deposit going into the account, how long the account has been open, where the check is coming from, the balance in the account, whether the teller is aware of the member, how new the teller is. (Tr. P. 17)

5. Credit Union One had placed a hold on the taxpayer’s \$675 deposit for three business days. At the time of the deposit the taxpayer was not informed that the three-day hold would be placed on his account. (Tr. P. 27)

6. The taxpayer’s account at Credit Union One had been open since April of 1994. (Tr. P. 28)

7. The taxpayer presented evidence that other deposits made by the taxpayer into his Credit Union One account where there was insufficient money in the account to cover the amount of the deposit were not subject to a three day hold. (Taxpayer Ex. I)

8. On March 2, 1999, the Department issued a Notice of Assessment to the taxpayer for the tax owed and a late payment penalty. The Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

### CONCLUSIONS OF LAW:

The Department imposed the penalty for the late payment of the retailers' occupation tax pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department's regulations concerning reasonable cause provide as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

Under the circumstances of this case, the taxpayer provided sufficient evidence to show reasonable cause. When the taxpayer made the \$675 deposit, he was not informed that there would be a three-day hold placed on the deposit. The employee of the credit union admitted that it is within the discretion of the teller as to whether to place a hold on the deposit. (Tr. P. 22) There is no indication that the taxpayer had a history of making late payments, and there was sufficient income in the taxpayer's account to cover the amount of the check sent to the Department. It therefore appears that the taxpayer made a good faith effort to determine his proper tax liability and pay it in a timely fashion.

### Recommendation:

For the foregoing reasons, it is recommended that the late payment penalty be abated.

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Linda Olivero  
Administrative Law Judge

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